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IN THE

# Supreme Court of the United States

No. 617

October Term—1952

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KWONG HAI CHEW,

*Petitioner*

vs.

CAPT. SVEND COLDING, Master of the SS "Sir John Franklin," and EDWARD J. SHAUGHNESSY, District Director of Immigration and Naturalization at the Port of New York

*Respondent*

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

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No. .....  OCTOBER TERM—1951

KWONG HAI CHEW

Petitioner

vs.

CAPT. SVEND COLDING, Master of SS "Sir John Franklin" and EDWARD J. SHAUGHNESSY, District Director of Immigration and Naturalization at the Port of New York

Respondent

## Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on December 4, 1951 (R-55), affirming a judgment of the United States District Court for the Eastern District of New York.

## Jurisdiction

The judgment of the United States Court of Appeals for the Second Circuit was entered December 4, 1951 (R-55). The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1254(1).

## Opinions Below

The opinion of the District Court is reported in 97 Fed. Supp. 592, and that of the Court of Appeals in 192 Fed. [2d] 1009. These opinions are incorporated in the record at pages 39-45 and 51-54, respectively.

## Question Presented

Whether petitioner, who is a seaman, a permanent resident of the United States and an applicant for citizenship therein, may, on his return voyage on an American vessel—leaving from and arriving at an American port—be detained at such American port and ordered deported without notice of the charges against him and without a hearing.

## Statutes and Regulations Involved

The Petitioner was ordered deported under authority of Section 175.57 (b), Title 8, Code of Federal Regulations which provides:

> "(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be, excludable under one or more of the categories set forth in § 175.53, no hearing by a board of special inquiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the

categories set forth in § 175.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

For other relevant statutes and regulations see:

Section 223, Title 22, United States Code, see Appendix 1a.

Section 137-4, Title 8, United States Code, see Appendix 1a.

Section 175.57(a), Title 8, Code of Federal Regulations, see Appendix 2a.

Section 175.53, Title 8, Code of Federal Regulations, see Appendix 3a.

For Presidential Proclamation No. 2523 of November 14, 1941, see Appendix 6a.

For Presidential Proclamation No. 2850 of August 17, 1949, see Appendix 9a.

## Statement of the Case

### *Establishment of Residence and Application for Citizenship*

Petitioner, an alien, a native of China, is by occupation a seaman (R-13). In 1946 he married a native American and in 1949 or 1950 (R-19) purchased a house in New York in which he lived with her. He has not established a residence in any other country but the United States (R-5).

He was admitted to permanent residence in the United States as of January 10, 1945 (R-18) and was thereafter advised that he was eligible to apply for naturalization (R-18). He did file an application for naturalization in New York City in April of 1950 (R-13) and this application is still pending (R-21).

Petitioner had never been arrested, either in this country or abroad; had never had any difficulty with the authorities (R-22). He lived a regular, orderly life. For his services in the Merchant Marine in the second World War he received a letter from the President of the United States citing him for his war service (R-41). So far as he had ever known, the authorities had never had any information adverse to him or anything that might be the basis of a proceeding against him—nothing that would preclude his being naturalized as a citizen of the United States. He had every reason to believe that he was acceptable for American citizenship (R-22).

***The Voyage on the Franklin***

In November, 1950, petitioner signed articles as a Chief Steward on the *SS Sir John Franklin* of the Isbrandtsen Line (R-34), a ship of American Registry with the home port of New York (R-5). At that time he was screened and passed by the Coast Guard (R-40). The voyage lasted some four months. The freighter left New York in November, 1950, stopped at various Far Eastern ports (R-20) and returned to New York in March, 1951 (R-40). Petitioner remained on board the *Franklin* during the voyage (R-19).

***Petitioner's Reasons for Believing That His Residence and the Privileges Attaching Thereto Were Not Impaired by the Voyage***

At the time petitioner left on the voyage, he had no reason to believe that he was in any way impairing his continuing American residence and its foundation for American citizenship. The United States statutes assured him that his residence continued (8 U. S. C. 707(d)(2)).

Two investigations had been conducted to determine his eligibility for life in America. The petitioner was admitted for permanent residence under the suspension of deportation provisions of 8 U. S. C. 155(c) (R-18, 33, 40). That section required an alien to present proof of good moral character for the five years preceding his application. The Attorney General was then required to pass upon the application for suspension of deportation and if he approved, send a detailed statement of the facts in the particular case and his reasons for recommending suspension to Congress. Unless Congress disapproved the suspension within two sessions thereafter the Attorney General cancelled the proceeding for deportation and the alien was admitted for permanent residence upon payment of a fee of $18.00. Upon the completion of this procedure petitioner was granted suspension of deportation and admitted to the United States for permanent residence as of January 10, 1945 (R-18).

At the time of the application for suspension of deportation, the Immigration and Naturalization Service made a thorough examination of the life of the petitioner as to his activities, beliefs, conduct and all other matters involved in determining his eligibility for suspension (R-33).

The screening by the Coast Guard and its approval of petitioner for service on an American vessel conducted just before petitioner left on the volage also examined into the question of whether the petitioner was a good security risk.

***Detention of Petitioner***

The first inkling that petitioner had that his residence in the United States was to be interrupted came when he arrived in American waters at the Port of San Francisco

on March 10, 1951 (R-21). On the basis of information of a confidential nature, the immigration inspector temporarily excluded him under 8 C. F. R. 175.57 (b) (R-32) as an alien whose entry is prejudicial to the public interest (R-40). The *Franklin* proceeded coastwise, arriving in New York on March 29. Upon its arrival, the temporary exclusion of petitioner was continued. The case was then reported to the Attorney General who on April 18, 1951 ordered that the petitioner be denied a hearing before a Board of Special Inquiry and that his temporary exclusion be made permanent (R-41).

At no time was petitioner informed of the charges against him or granted a hearing (R-5). Since March, 1951, he has been in detention. He is now at Ellis Island (R-41). He cannot visit his wife who is ill and dependent upon him for support (R-34). He cannot re-enlist on an American vessel because he cannot obtain Coast Guard screening (R-34). He cannot press to conclusion his application for American citizenship because of the ruling of the Attorney General (R-54). All of these major misfortunes have come to a law-abiding resident without his knowing what charges have been leveled against him (R-45), without any opportunity to establish that it may be a case of mistaken identity or that as to himself the charges are false.

***Habeas Corpus Proceedings***

A writ of habeas corpus was issued on April 3, 1951 (R-3) on the ground that the application of the restraint to the relator is arbitrary and capricious and a denial of due process of law in violation of the Fifth Amendment of the Constitution (R-5). Hearings were commenced on April 16 (R-12). There was an amended return after the Attorney General directed that the temporary exclusion be made permanent and that petitioner be denied a hearing

before a Board of Special Inquiry (R-32). There was an amended traverse to the return. The Court by order entered on May 21st dismissed the writ (R-46). The Court of Appeals for the Second Circuit on December 4, 1951 affirmed the decision of the District Court.

### Decisions of the Lower Court

The District Court, Eastern District of New York, per GALSTON, *D. J.*, thought that the question was basically whether the Court had jurisdiction to review the act of the Attorney General (R-42, 97 F. Supp. 592, 594). The Court felt bound by the decision in *Knauff* v. *Shaughnessy*, 338 U. S. 537. It held that there was no distinction between the petitioner, an alien resident, and Mrs. Knauff, who never resided in this country. "In essence", said the Court, "their status is the same. They are both aliens" (R-44). The Court felt that "a resident alien seeking admission to the United States upon his return from abroad is subject to all the exclusions of the immigration laws * * * each return of an alien from abroad is a new entry * * *" (R-44).

The Court of Appeals for the Second Circuit held the *Knauff* case applicable to the petitioner here despite his residence. It held that "a resident alien who voluntarily goes to a foreign country is subject upon his return to all the excluding provisions of the immigration law 'the same as if he had no previous residence or domicile in this country * * *'" (R-52, 53, 192 F. (2d) 1009, 1011).

## Reasons for Granting the Writ

1. Section 137–4, Title 8 of the United States Code, the Presidential Proclamations Nos. 2523 and 2850, and the rules and regulations issued thereunder, as construed and

applied by the Court of Appeals for the Second Circuit, violate the Fifth Amendment to the Constitution of the United States.

2. The decision of the Circuit Court sustaining the power of the Attorney General to detain and deport an American seaman who is a lawful permanent alien resident of the United States without such resident being informed of the charges against him and without being given a hearing on such charges, conflicts with the decisions of this Court rendered over a period of 60 years.

3. The precise question developed by the facts of this case—whether a resident alien temporarily absent upon a voyage in the ordinary course of business, undertaken with the permission of the Federal authorities, is because of such voyage and upon his return to the United States divested of his constitutional right to due process—raises a federal issue of substance not heretofore presented to this Court for adjudication.

4. The extension of the power of the Attorney General to exclude, without notice or an opportunity to defend, resident aliens returning to this country, presents a question of vital concern to the security and rights of millions of resident aliens.

## Argument

The right of a resident alien to be protected against deportation except after full and fair hearing—established for over sixty years by the decisions of this Court—has been set at naught by the decision below.

1. The right of an alien resident, specifically one who has established himself and his family in this country and has filed his petition for citizenship, to the constitutional guarantees of due process has been recently reasserted

by this Court (*Johnson* v. *Eisentrager*, 339 U. S. 763, 770-1).[1]

*Knauff* v. *Shaughnessy*, 338 U. S. 537, did not hold otherwise. In that case this Court was concerned only with an alien immigrant who had never been admitted to the United States and was for the first time seeking that privilege.

The Solicitor General in his brief before this Court in the *Knauff* case carefully distinguished between the case of the *alien entrant* who, he contended, is not entitled to the constitutional protection of due process, and the *alien resident* who, he admitted, is.[2]

The petitioner, when he was placed in detention, was a resident alien within the territorial jurisdiction of the United States, first in the port of San Francisco and later in the Port of New York (*Cunard Steamship Co.* v. *Mellon*, 262 U. S. 100, 122). Like any other resident, he was entitled to constitutional protection.

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1. "The alien, to whom the United States has been traditionally hospitable, has been accorded a generous and ascending scale of rights as he increases his identity with our society. Mere lawful presence in the country creates an implied assurance of safe conduct and gives him certain rights; they become more extensive and secure when he makes preliminary declaration of intention to become a citizen, and they expand to those of full citizenship upon naturalization. During his probationary residence, this Court has steadily enlarged his right against Executive deportation except upon full and fair hearing. *The Japanese Immigrant Case*, 189 U. S. 86; *Low Wah Suey* v. *Backus*, 225 U. S. 460; *Tisi* v. *Tod*, 264 U. S. 131; *U. S. ex rel. Vajtauer* v. *Comm'r*, 273 U. S. 103; *Bridges* v. *Wixon*, 326 U. S. 135; *Wong Yang Sung* v. *McGrath*, 339 U. S. 33. And, at least since 1886, we have extended to the person and property of resident aliens important constitutional guaranties—such as the due process of law of the Fourteenth Amendment. *Yick Wo* v. *Hopkins*, 118 U. S. 356."

2. "Petitioner's constitutional arguments are founded in part on a failure to observe the distinction between the deportation of aliens residing within the United States and the exclusion of aliens who, never having resided or even been physically present in the country, seek to enter. The alien who resides here and who is sought to be deported may claim the full protection of the due process clause of the Constitution (citing cases). But petitioner is an alien seeking entry to the United States. She has gained no foothold here. In contemplation of law she is regarded as stopped at the boundary line while her eligibility to enter is adjudicated (citing cases). A person so situated is not entitled to claim the full protection of the Constitution, even if he claims to be an American citizen, which petitioner does not (citing cases)." (Respondent's Brief signed by the Solicitor General, pp. 27-28)

In addition, he was a seaman on an American vessel. The statutes of the country of his domicile had assured him that the continuity of his residence for the purpose of naturalization would not be affected by "continuous service * * * on a vessel or vessels whose home port is in the United States and which are of American registry or American owned, if rendered subsequent to the applicant's lawful entry into the United States for permanent residence and immediately preceding the date of naturalization" (8 U. S. C. 707(d)(2)). The time which the petitioner spent in his voyage on the *Franklin*, the statute specifically provided, "shall be regarded as residence within the United States within the meaning of this subchapter" (8 U. S. C. 707(d)).

And the general principles of the law of domicile establish that a temporary absence consistent with an intention to return to one's domicile, does not work a relinquishment of the domicile nor affect the obligations of the resident to the country of his choice (American Law Institute Restatement—"Conflict of Laws", Sec. 63, p. 95), nor his correlative right to invoke its protection (*Cf.*, *Milliken* v. *Meyer*, 311 U. S. 457, 464).

And yet because petitioner stepped off the mainland of America to embark on a voyage in the course of his regular occupation—a voyage which would not terminate or interrupt his residence—the Court below held in substance that he was divested of his "vested interest in his residence" (Learned Hand, *C. J.*, *DiPasquale* v. *Karnuth*, 158 Fed. [2d] 878, 879), and of his constitutional rights flowing from that residence.

2. The Court below inverted the holding in the *Knauff* case. In that case the denial of the constitutional pro-

tection due an alien rested upon the fact that the alien there had never gained a foothold in this country. In the name of the *Knauff* case, constitutional protection is denied to the petitioner although for years he and his family had been settled here.

So long as domiciled aliens are entitled to constitutional protection, we submit there is no support in reason for the decision below denying petitioner a hearing. Nor is there any support in any applicable authority. The cases dealing with entry and re-entry cited by the Courts and the Government have nothing to do with procedural due process. The effect of petitioner's return or re-entry upon the period of limitations under the immigration law or upon any offense that may be made a basis for exclusion or deportation may be determined upon a proper hearing. Whether or not, as the District Court feared (R-42) a court may be asked to review or override the discretion exercised by the Attorney General or by the administrative officials after an appropriate hearing, may be taken care of if and when that question should ever arise.

What is involved here is the simple question whether a resident alien whose domicile within this country has never been relinquished, may, within the territorial jurisdiction of the United States be detained and ordered deported without a hearing.

There is no authority in any appellate federal court cited by either of the courts below in their opinions or by the Government in its brief in the Court of Appeals which holds that an alien resident may be deported without knowing the charges against him and being given an opportunity to defend. In fact, in each one of these cases the

opinion shows that the alien resident was held deportable only *after a hearing.*[3]

3. Instead of the full and fair hearing guaranteed to resident aliens, petitioner was deprived of all safeguards. What happened to petitioner was a tap on the shoulder and then detention. He was not informed of the charge. A minor official, the immigration inspector at the port of arrival, has determined that the returning petitioner is "one whose entry is deemed prejudicial to the public interest" (R-8). What standard of conduct petitioner has failed to follow he does not know, even now. (*Cf., Jordan* v. *De George*, 341 U. S. 223, 232).

The inspector's conclusion, based upon undisclosed facts, was reported to the Attorney General. And "if the Attorney General is satisfied that the alien is excludable * * * on the basis of information of a confidential

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3. *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 424; *Roovers* v. *Kessler*, 5 Cir., 90 Fed. [2d] 327, 328; *McCandless* v. *United States ex rel. Pantoja*, 3 Cir., 44 Fed. [2d] 786, 787; *United States ex rel. Siegel* v. *Reimer*, 23 Fed. Supp. 643, aff'd *Fisk* v. *Reimer*, 2 Cir., 97 Fed. [2d] 1020; *Lewis* v. *Frick*, 233 U. S. 291, 293; *Lapina* v. *Williams*, 232 U. S. 78, 83; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 731; *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129, 131; *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, 400; *Bendel* v. *Nagle*, 9 Cir., 17 F. [2d] 719; *United States ex rel. Lamp* v. *Corsi*, 2 Cir., 61 F. [2d] 964, 965.

In *Quon Quon Poy* v. *Johnson*, 273 U. S. 352, the Supreme Court denied the right to a *judicial* hearing on the question of citizenship on the ground that *a full and fair administrative hearing* had been held, and implied (p. 358) that the decision would have been otherwise had the petitioner been a resident of this country. See dissenting opinion of Judge Frank in *Mederios* v. *Watkins*, 166 Fed. [2d] 897, 900, 902, to the same effect.

In *Nishimura Ekiu* v. *United States*, 142 U. S. 651, the court sustained the exclusion of an alien immigrant *entrant* found by the immigration inspector without formal hearing as likely to become a public charge, stating (p. 660): "It is not within the province of the judiciary to order that foreigners *who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the country pursuant to law*, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government." (Italics supplied.)

nature, the disclosure of which would be prejudicial to the public interest, safety or security", he may, as was done here, deny inquiry by a Board of Special Inquiry and order such alien to be excluded and deported (8 C. F. R. 175.57(b)). But the Attorney General's "satisfaction" is arrived at without any representation on the part of the alien. There is not even the opportunity to show that there may have been a case of mistaken identity. Such secret, one-sided determination of facts cannot be decisive of rights where American ideals prevail. (*Cf., Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 170.)[4]

## Conclusion

**Wherefore, in view of the gravity of this question and its importance to our alien residents, petitioner prays that this petition for writ of certiorari to the United States Court of Appeals for the Second Circuit be granted, and that this Court review and reverse the order dismissing the writ of habeas corpus.**

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4. In the *Knauff* case itself—when the Attorney General finally, after much public indignation was expressed over the denial of a hearing to Mrs. Knauff, granted such a hearing—her right to enter the country was upheld. (New York Times, Nov. 3, 1951, page 1.)

[APPENDIX FOLLOWS]

## Appendix

The additional relevant statutes, regulations and proclamations involved are as follows:

The relevant provision of Section 223, Title 22, United States Code (Act of May 22, 1918, c. 81, § 1, 40 Stat. 559, as amended June 21, 1941, c. 210, § 1, 55 Stat. 252), is as follows:

> "When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by Sections 223-226b of this title be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—
>
> (a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations and orders, and subject to such limitations and exceptions as the President shall prescribe; • • •"

Section 137–4, Title 8, United States Code (The Act of October 16, 1918, c 186, § 5, as added September 23, 1950, c. 1024, Title 1, § 22, 64 Stat. 1006), provides:

> "§ 137–4. **Temporary exclusion of subject subversive aliens; determination and deportation.**
>
> Notwithstanding the provisions of Sections 152 and 153 of this title, which relate to boards of spe-

cial inquiry and to appeal from the decisions of such boards, any alien who may appear to the examining immigration officer at the port of arrival to be excludable under Section 137 of this title shall be temporarily excluded, and no further inquiry by a board of special inquiry shall be conducted until after the case is reported to the Attorney General and such an inquiry is directed by the Attorney General. If the Attorney General is satisfied that the alien is excludable under 137 of this title on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest, safety, or security, he may deny any further inquiry by a board of special inquiry and order such alien to be excluded and deported."

Section 175.57 (a), Title 8, Code of Federal Regulations, provides:

"*Entry Not Permitted in Special Cases.* (a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.62, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudi-

cial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States."

Section 175.53, Title 8, Code of Federal Regulations, provides:

"*Classes of aliens whose entry is deemed to be prejudicial to the public interest.* The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States for the purposes of §§ 175.41 to 175.62, inclusive:

(a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended. (40 Stat. 1012, 41 Stat. 1008-9, 54 Stat. 673; 8 U. S. C. 137).

(b) Any alien who is a member of, affiliated with, or may be active in the United States in connection with or on behalf of, a political organization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries of the Western Hemisphere, or in the prosecution of the war.

(c) Any alien in possession of, or seeking to procure, unauthorized secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States.

(d) Any alien engaged in activities designed to obstruct, impede, retard, delay, or counteract the effectiveness of the measures adopted by the Government of the United States for the defense of the United States or for the defense of any other country, or the prosecution of the war.

(e) Any alien engaged in activities designed to obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or steps taken by any country of the Western Hemisphere in the interest of the common defense of the countries of such Hemisphere.

(f) Any alien engaged in organizing, teaching, advocating, or directing any rebellion, insurrection, or violent uprising against the United States.

(g) Any alien engaged in a plot or plan to destroy materials, or sources thereof, vital to the defense of, or the prosecution of the war by, the United States, or to the effectiveness of the measures adopted by the United States for the defense of any other country.

(h) Any alien whose admission would endanger the public safety, as provided in any executive order issued in pursuance of the act of Congress approved June 20, 1941 (ch. 209, 55 Stat. 252; 22 U. S. C., 228, 229).

(i) Any alien enemy: *Provided,* That this excluding provision shall not apply to aliens who

(1) Present valid permits to enter issued on or after November 14, 1941, or are exempted under these regulations from presenting permits to enter and are found to be otherwise admissible under §§ 175.41 to 175.62, inclusive, or

(2) Before September 1, 1939, became and still are citizens or subjects of any foreign country at war with Japan and who have not, since September 1, 1939, and before May 8, 1945, returned to any enemy or enemy-controlled territory; or

(3) Are under 14 years of age; or

(4) Are excepted from the excluding provisions of this subsection in the discretion of the permit-issuing authority or of the Secretary of State.

(j) Any alien found to be, or charged with being, a war criminal by the appropriate authorities of the United States or one of its co-belligerents, or an alien who has been guilty of, or who has advocated or acquiesced in activities or conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War.

(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252; 22 U. S. C. 223) to safeguard."

The pertinent portions of Presidential Proclamation No. 2523 of November 14, 1941 (published in the Federal Register November 18, 1941) are as follows:

"CONTROL OF PERSONS ENTERING AND LEAVING THE UNITED STATES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the act of Congress approved on May 22, 1918 (40 Stat. 559), as amended by the act of Congress approved on June 21, 1941 (Public Law 114, 77th Cong., chap. 210, 1st sess., 55 Stat. 252) vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, or during the existence of the national emergency proclaimed by the President on May 27, 1941,[1] or, as to aliens, whenever there exists a state of war between or among two or more states, and when I find that the interests of the United States so require; and

WHEREAS the national emergency proclaimed by me on May 27, 1941 is still existing; and

WHEREAS there unhappily exists a state of war between or among two or more states and open hostilities engage a large part of the Eastern Hemisphere; and

WHEREAS the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon

[1] 6 F.R. 2617.

the departure of persons from and their entry into the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority vested in me as set forth above, do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed upon the departure of persons from and their entry into the United States, * * * and I make the following rules, regulations, and orders which shall remain in force and effect until otherwise ordered by me:

* * *

(2) No alien shall depart from or attempt to depart from the United States unless he is in possession of a valid permit to depart issued by the Secretary of State or by an officer designated by the Secretary of State for such purpose, or unless he is exempted from obtaining a permit, in accordance with rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of the rules, regulations, and orders herein prescribed; nor shall any alien depart from or attempt to depart from the United States at any place other than a port of departure designated by the Attorney General or by the Commissioner of Immigration and Naturalization or by an appropriate permit-issuing authority designated by the Secretary of State.

No alien shall be permitted to depart from the United States if it appears to the satisfaction of the Secretary of State that such departure would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

(3) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter in accordance with the rules and regulations which Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of these rules, regulations, and orders.

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by Secretary of State, with the concurrence of the Attorney General."

* * *

Presidential Proclamation No. 2850 of August 17, 1949 (published in the Federal Register August 19, 1949) provides:

"AMENDMENT OF PROCLAMATION NO. 2523[1] PRESCRIBING REGULATIONS RELATING TO THE CONTROL OF PERSONS ENTERING OR LEAVING THE UNITED STATES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS Proclamation No. 2523 of November 14, 1941, issued under and by virtue of the authority vested in the President by the act of May 22, 1918, 40 Stat. 559, as amended by the act of June 21, 1941, 55 Stat. 252, prescribes regulations which impose certain restrictions and prohibitions, in addition to those otherwise provided by law, upon the departure of persons from and their entry into the United States; and

WHEREAS I find that the interests of the United States, within the meaning of the said act of June 21, 1941, and by reason of the continued existence of the conditions set forth in section 1 thereof, require that the said proclamation be amended as hereinafter set forth:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in the President by the act of Congress above mentioned, do proclaim as follows:

1. The said Proclamation No. 2523 is hereby amended so that paragraph numbered (3) thereof, together with the succeeding unnumbered paragraph, shall read as follows:

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[1] 3 CFR. Cum. Supp.

'(3)(a) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter, in accordance with rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe.

'(b) No permit to enter shall be issued to an alien if it appears to the satisfaction of the issuing officer, or the Secretary of State, that the alien's entry would be prejudicial to the interests of the United States within the meaning of the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State with the concurrence of the Attorney General.

'(c) Notwithstanding the provisions of the foregoing paragraphs (a) and (b), no alien applying for admission, even with a valid permit to enter, shall enter or be permitted to enter the United States if it appears to the satisfaction of the Attorney General that such entry would be prejudicial to the interests of the United States.'

2. All existing regulations promulgated under or pursuant to the said Proclamation No. 2523 are hereby ratified and confirmed and shall be construed to have the same effect as if included in such proclamation: *Provided, however*, that nothing contained herein shall be deemed to limit lawful authority to amend or modify such regulations."

* * *